

CLOSED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GUANGYI XU, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CHINACACHE INTERNATIONAL
HOLDINGS LTD., SONG WANG, JING
AN, and KEN VINCENT QINGSHI
ZHANG,

Defendants.

Case No: 2:15-cv-07952-CAS (RAOx)

**~~[PROPOSED]~~ ORDER AND
FINAL JUDGMENT**

Judge: Hon. Christina A. Snyder

On the 13th day of August, 2018, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement dated March 27, 2018 (the “Stipulation”) are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against the Defendants (as defined in the Stipulation), including the release of the Released Claims against the Released Parties, and should be approved; (2) whether judgment should be

1 entered dismissing this Action with prejudice; (3) whether to approve the proposed
2 Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund
3 among Settlement Class Members; (4) whether and in what amount to award Class
4 Counsel as fees and reimbursement of expenses; and (5) whether and in what amount
5 to award Lead Plaintiffs as incentive fees; and

6 No member of the Settlement Class objected to the Settlement, and none
7 requested exclusion from the Settlement Class; and

8 No member of the Settlement Class appeared at the August 13, 2018 final
9 approval hearing; and

10 The Court having considered all matters submitted to it at the hearing and
11 otherwise; and

12 It appearing in the record that the Notice substantially in the form approved by
13 the Court in the Court's Order Granting Lead Plaintiff's Motion for Preliminary
14 Approval of Class Action Settlement, dated April 30, 2018 ("Preliminary Approval
15 Order") was mailed to all reasonably identifiable Settlement Class Members and posted
16 to the website of the Claims Administrator, both in accordance with the Preliminary
17 Approval Order and the specifications of the Court; and

18 It appearing in the record that the Summary Notice substantially in the form
19 approved by the Court in the Preliminary Approval Order was published in accordance
20 with the Preliminary Approval Order and the specifications of the Court;

21 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
22 DECREED THAT:
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24 All capitalized terms used herein have the same meanings as set forth and
25 defined in the Stipulation.

26 For purposes of this Settlement, the Court has jurisdiction over the subject matter
27 of the Action, Lead Plaintiffs, all Settlement Class Members, and ChinaCache.
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1 The Court finds that the prerequisites for a class action under Rule 23(a) and
2 (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number
3 of Settlement Class Members is so numerous that joinder of all members thereof is
4 impracticable; (b) there are questions of law and fact common to the Settlement Class;
5 (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class he
6 seeks to represent; (d) Lead Plaintiff fairly and adequately represents the interests of
7 the Settlement Class; and (e) questions of law and fact common to the members of the
8 Settlement Class predominate over any questions affecting only individual members of
9 the Settlement Class.

10 The Court hereby finally certifies this action as a class action only for purposes
11 of the Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil
12 Procedure, on behalf of all Persons (including, without limitation, their beneficiaries)
13 who purchased ChinaCache International Holdings Ltd. (“ChinaCache”) American
14 Depositary Shares (“ADS”) during the period from March 27, 2015 through August
15 20, 2015, inclusive (“Settlement Class Period”), except that excluded from the
16 Settlement Class are all: (i) Defendants and all officers and directors of ChinaCache
17 during the Settlement Class Period; (ii) immediate family members of any Person
18 excluded under section (i) of this definition; (iii) any entities affiliated with or
19 controlled by any person excluded under sections (i) and (ii) of this definition; (iv) the
20 legal representatives, heirs, successors or assigns of any person excluded under
21 subsections (i) through (iii) of this definition; and (v) Opt-Outs. Pursuant to Rule 23
22 of the Federal Rules of Civil Procedure, Lead Plaintiff, Guangyi Xu, is certified as the
23 class representative on behalf of the Settlement Class (“Class Representative”) and
24 Lead Counsel, The Rosen Law Firm, P.A., previously selected by Lead Plaintiff and
25 appointed by the Court are hereby appointed as Class Counsel for the Settlement Class
26 (“Class Counsel”).
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1 In accordance with the Court's Preliminary Approval Order, the Claims
2 Administrator timely mailed the Postcard Notice to 147 individuals and organizations
3 identified by the transfer agent of ChinaCache. The Claims Administrator timely
4 mailed a letter to the 778 largest banks and brokerage companies ("Nominee Holders")
5 and to 625 mutual funds, insurance companies, pension funds, and money managers
6 ("Institutional Holders"), informing them of the Settlement and requesting the names
7 of beneficial owners of ChinaCache ADSs or for the Nominee Holders to transmit the
8 Notice and Claim Form to beneficial owners. The Claims Administrator mailed 2,481
9 Postcard Notices to potential Settlement Class Members or nominees. The Claims
10 Administrator timely posted the Long Notice and Claim Form to its website. The
11 Settlement Administrator caused Globe Newswire to publish the Summary Notice
12 timely, on May 18, 2018.

13 The Court hereby finds, therefore, that the forms and methods of notifying the
14 Settlement Class of the Settlement and its terms and conditions met the requirements
15 of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7)
16 of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities
17 Litigation Reform Act of 1995; constituted the best notice practicable under the
18 circumstances; and constituted due and sufficient notice of these proceedings and the
19 matters set forth herein, including the Settlement and Plan of Allocation, to all persons
20 and entities entitled to such notice. No Settlement Class Member is relieved from the
21 terms and conditions of the Settlement, including the releases provided for in the
22 Stipulation, based upon the contention or proof that such Settlement Class Member
23 failed to receive actual or adequate notice. A full opportunity has been offered to the
24 Settlement Class Members to object to the proposed Settlement and to participate in
25 the hearing thereon. No putative member of the Settlement Class has objected to the
26 Settlement and none has requested exclusion from the Class. No Settlement Class
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1 member appeared at the August 13, 2018 hearing. Thus, it is hereby determined that
2 all Settlement Class Members are bound by this Final Judgment.

3 The Court finds that the risks associated with protracted litigation and Lead
4 Plaintiff's proving his claims and the claims of the putative class at trial were
5 substantial, supporting the fairness, reasonableness, and adequacy of the Settlement.

6 First, the Court dismissed both Lead Plaintiff's First Amended Complaint and
7 his Second Amended Complaint for failure to allege falsity adequately. The Court
8 recognizes that the parties negotiated the Settlement while the action was on appeal to
9 the United States Court of Appeals for the Ninth Circuit. The Court acknowledges that
10 the action was on appeal from its final order of dismissal and that Lead Plaintiff faced
11 a substantial challenge obtaining reversal of the dismissal order.

12 Second, the Court finds that even had the Ninth Circuit reversed the order of
13 dismissal, Lead Plaintiff faced obstacles to proving that Defendants made the allegedly
14 false and misleading statements at issue with scienter. In the Order, dismissing the
15 Second Amended Complaint, the Court found that Lead Plaintiff had failed to plead
16 that the individual defendants personally gained from the fraud, that the "core
17 operations" doctrine applied, or that the Complaint's allegations gave rise to a strong
18 inference of corporate scienter.

19 Third, the Court finds that, on remand, even if the Court sustained the adequacy
20 of the Complaint's other allegations, Lead Plaintiff would have encountered substantial
21 difficulties obtaining full discovery from persons and entities located in the People's
22 Republic of China ("PRC").

23 Fourth, the Court acknowledges that even if Lead Plaintiff prevailed in a jury
24 trial, proving each element of a Rule 10b-5 claim, substantial risk existed that he would
25 have been unable to enforce a judgment in the PRC, on behalf of himself and the Class.
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1 Given these risks and uncertainties, among others, and that no member of the
2 Settlement Class objected to the Settlement or sought exclusion from the Class, the
3 Court approves the Settlement as fair, reasonable and adequate, and in the best interests
4 of the Settlement Class. This Court further finds that the Settlement set forth in the
5 Stipulation is the result of good faith, arm's-length negotiations between experienced
6 counsel representing the interests of the Class Representative, Settlement Class
7 Members, and ChinaCache. The Parties are directed to consummate the Settlement in
8 accordance with the terms and provisions of the Stipulation.

9 The Action and all claims contained therein, as well as all of the Released
10 Claims, are dismissed with prejudice as against each and all of the Defendants. The
11 Parties are to bear their own costs, except as otherwise provided in the Settlement
12 Stipulation.

13 Upon the Effective Date, the Releasing Parties, on behalf of themselves, their
14 successors and assigns, and any other Person claiming (now or in the future) through
15 or on behalf of them, regardless of whether any such Releasing Party ever seeks or
16 obtains by any means, including without limitation by submitting a Proof of Claim, any
17 disbursement from the Settlement Fund, shall be deemed to have, and by operation of
18 this Final Judgment shall have, fully, finally, and forever released, relinquished, and
19 discharged all Released Claims against the Released Parties. The Releasing Parties
20 shall be deemed to have, and by operation of this Final Judgment shall have,
21 covenanted not to sue the Released Parties with respect to any and all Released Claims
22 in any forum and in any capacity. The Releasing Parties shall be and hereby are
23 permanently barred and enjoined from asserting, commencing, prosecuting, instituting,
24 assisting, instigating, or in any way participating in the commencement or prosecution
25 of any action or other proceeding, in any forum, asserting any Released Claim, in any
26 capacity, against any of the Released Parties. Nothing contained herein shall, however,
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1 bar the Releasing Parties from bringing any action or claim to enforce the terms of the
2 Stipulation or this Final Judgment.

3 With respect to any and all Released Claims, the Class Representative and the
4 Released Parties shall waive and each of the Settlement Class Members shall be
5 deemed to have waived, and by operation of this Final Judgment shall have waived,
6 the provisions, rights, and benefits of California Civil Code § 1542, which provides:

7 **A general release does not extend to claims which the creditor does**
8 **not know or suspect to exist in his or her favor at the time of executing**
9 **the release, which if known by him or her must have materially**
10 **affected his or her settlement with the debtor.**

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12 The Class Representative and the Released Parties shall waive and each of the
13 Settlement Class Members shall be deemed to have waived, and by operation of this
14 Final Judgment shall have waived, any and all provisions, rights and benefits conferred
15 by any law of any state, territory, foreign country or principle of common law, which
16 is similar, comparable or equivalent to California Civil Code § 1542. The Class
17 Representative, the Released Parties and/or one or more Settlement Class Members
18 may hereafter discover facts in addition to or different from those which he, she or it
19 now knows or believes to be true with respect to the Released Claims, but the Class
20 Representative, the Released Parties and each Settlement Class Member, upon the
21 Effective Date, shall be deemed to have, and by operation of this Final Judgment shall
22 have, fully, finally and forever settled and released, any and all Released Claims,
23 known or unknown, suspected or unsuspected, contingent or non-contingent, whether
24 or not concealed or hidden, which now exist, or heretofore have existed, upon any
25 theory of law or equity now existing or coming into existence in the future, including,
26 but not limited to, conduct which is negligent, intentional, with or without malice, or a
27 breach of fiduciary duty, law or rule, without regard to the subsequent discovery or
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1 existence of such different or additional facts. The Class Representative and the
2 Released Parties acknowledge and the Settlement Class Members shall be deemed by
3 operation of this Final Judgment to have acknowledged, that the foregoing waiver was
4 separately bargained for and a key element of the Settlement.

5 Upon the Effective Date, the Released Parties shall be deemed to have, and by
6 operation of the Final Judgment shall have, fully, finally, and forever released,
7 relinquished, and discharged all claims they may have against the Releasing Parties
8 related to the Releasing Parties' prosecution of the Action or any other known or
9 unknown counter-claim related thereto and shall have covenanted not to sue the
10 Releasing Parties with respect to any counter claim, claim, or sanction related to the
11 Released Claims, and shall be permanently barred and enjoined from asserting,
12 commencing, prosecuting, instituting, assisting, instigating, or in any way participating
13 in the commencement or prosecution of any action or other proceeding, in any forum,
14 asserting any such claim, in any capacity, against any of the Releasing Parties. Nothing
15 contained herein shall, however, bar the Released Parties from bringing any action or
16 claim to enforce the terms of this Stipulation or the Final Judgment.

17 The Court finds that all Parties and their counsel have complied with all
18 requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private
19 Securities Litigation Record Act of 1995 as to all proceedings herein.

20 Neither this Final Judgment, the Stipulation (nor the Settlement contained
21 therein), nor any of its terms and provisions, nor any of the negotiations, documents or
22 proceedings connected with them is evidence, or an admission or concession by any
23 Party or their counsel, any Settlement Class Member, or any of the Released Parties,
24 of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or
25 asserted in the Action or could have been alleged or asserted, or any other actions or
26 proceedings, or as to the validity or merit of any of the claims or defenses alleged or
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1 asserted or could have been alleged or asserted in any such action or proceeding. This
2 Final Judgment is not a finding or evidence of the validity or invalidity of any claims
3 or defenses in the Action, any wrongdoing by any Party, Settlement Class Member, or
4 any of the Released Parties, or any damages or injury to any Party, Settlement Class
5 Member, or any Released Parties. Neither this Final Judgment, the Stipulation (nor the
6 Settlement contained therein), nor any of its terms and provisions, nor any of the
7 negotiations, documents or proceedings connected with therewith (a) shall (i) be argued
8 to be, used or construed as, offered or received in evidence as, or otherwise constitute
9 an admission, concession, presumption, proof, evidence, or a finding of any, liability,
10 fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions
11 on the part of any Released Party, or of any infirmity of any defense, or of any damages
12 to the Class Representative or any other Settlement Class Member, or (ii) otherwise be
13 used to create or give rise to any inference or presumption against any of the Released
14 Parties concerning any fact or any purported liability, fault, or wrongdoing of the
15 Released Parties or any injury or damages to any person or entity, or (b) shall otherwise
16 be admissible, referred to or used in any proceeding of any nature, for any purpose
17 whatsoever; provided, however, that this Final Judgment, the Stipulation, or the
18 documents related thereto may be introduced in any proceeding, whether in the Court
19 or otherwise, as may be necessary to enforce the Settlement or Final Judgment, or as
20 otherwise required by law.

22 The Court finds that ChinaCache has complied with its obligations under the
23 Class Action Fairness Act (“CAFA”), 28 U.S.C. §1715(b), transmitting CAFA notice,
24 by May 3, 2018 letter, to the appropriate state and federal officials that 28 U.S.C.
25 §1715(a) specifies.

26 Except as otherwise provided herein or in the Stipulation, all funds held by the
27 Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the
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1 jurisdiction of the Court until such time as the funds are distributed or returned pursuant
2 to the Stipulation and/or further order of the Court.

3 Exclusive jurisdiction is hereby retained over the Parties and the Settlement
4 Class Members for all matters relating to the Action, including the administration,
5 interpretation, effectuation or enforcement of the Stipulation and this Final Judgment,
6 and including any application for fees and expenses incurred in connection with
7 administering and distributing the Settlement Fund to the Settlement Class Members.

8 Without further order of the Court, the ChinaCache and Class Representative
9 may agree to reasonable extensions of time to carry out any of the provisions of the
10 Stipulation.

11 There is no just reason for delay in the entry of this Final Judgment and
12 immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b)
13 of the Federal Rules of Civil Procedure.

14 The finality of this Final Judgment shall not be affected, in any manner, by
15 rulings that the Court makes herein on the proposed Plan of Allocation or Class
16 Counsel's application for an award of attorneys' fees and expenses or an award to the
17 Class Representative.

18 The Court hereby finds that the proposed Plan of Allocation is a fair and
19 reasonable method to allocate the Net Settlement Fund among Settlement Class
20 Members, and Class Counsel and the Claims Administrator are directed to administer
21 the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

22 With respect to fees, the Court finds that the risks of litigation, coupled with the
23 fully contingent nature of the fee arrangement among Lead Plaintiff and Class Counsel,
24 support the award of attorneys' fees in this action. In addition, the Court will apply the
25 percentage of the recovery method of awarding fees and finds that awarding 25% of
26 the Settlement Fund is consistent with the benchmark in this Circuit and with awards
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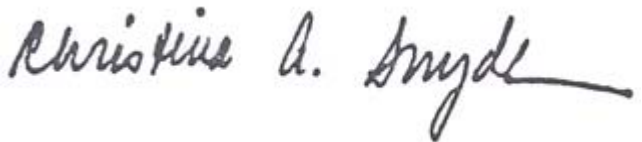
1 of fees in similar securities class actions. The Court notes, once again, that no member
2 of the Settlement Class objected to Class Counsel's request for fees or for
3 reimbursement of expenses. The Court also finds that because Class Counsel will
4 receive a negative multiplier of 0.48 of its total lodestar, the cross-check supports an
5 award of 25% of the Settlement Fund as attorney's fees.

6 As such, the Court hereby awards Class Counsel 25% of the Settlement Amount
7 in attorneys' fees, or \$247,500, which the Court finds to be fair and reasonable, and
8 \$29,297.04 in reimbursement of expenses.

9 The Court hereby awards the Class Representative \$2,500, which the Court
10 finds to be fair and reasonable. Beyond payment of the Settlement Amount,
11 ChinaCache and the Released Parties shall have no responsibility for, and no liability
12 whatsoever with respect to, any payments to Class Counsel, the Class Representative,
13 the Settlement Class and/or any other Person who receives payment from the
14 Settlement Fund.

15 In the event the Settlement is not consummated in accordance with the terms of
16 the Stipulation, then the Stipulation and this Final Judgment (including any
17 amendment(s) thereof, and except as expressly provided in the Stipulation or by order
18 of the Court) shall be shall have no further force and effect with respect to the Parties
19 and shall not be used in the Action or in any other proceeding for any purpose, and any
20 judgment or order entered by the Court in accordance with the terms of this Stipulation
21 shall be treated as vacated, *nunc pro tunc*, and each Party shall be restored to his, her
22 or its respective litigation positions as they existed prior to March 27, 2018, pursuant
23 to the terms of the Stipulation.

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26 Dated: August 13, 2018


HON. CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE